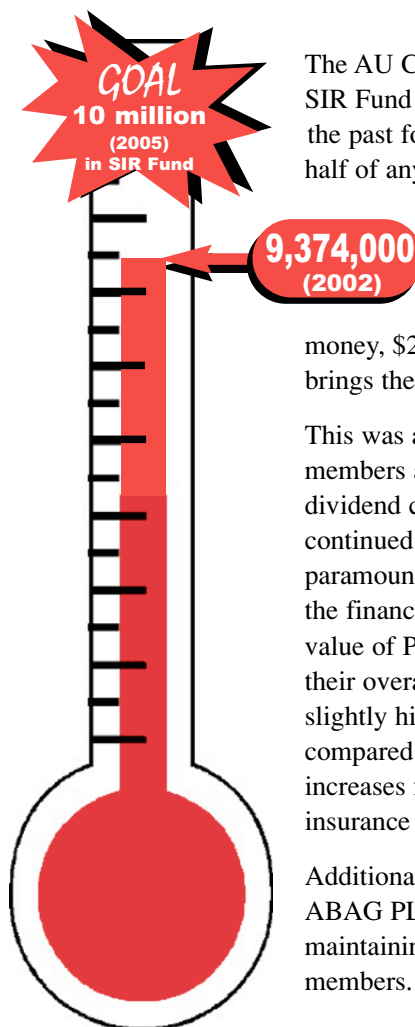


STRATEGIC PLAN FUNDING POLICY UPDATE

The 2001 ABAG PLAN strategic planning meeting identified several areas for action over the next three years, including updating governing documents, clarifying committee roles and responsibilities, developing a funding policy, and improving loss prevention programs. Committees were assigned to evaluate each area and establish specific financial and operational goals.

The Actuary and Underwriting (AU) Committee was assigned to develop a funding policy and a major milestone was met with the new policy's approval at the May Board meeting. The policy has three objectives, in order of importance: maintaining sufficient assets to pay expected losses, maintaining fund stability to avoid substantial fluctuations in deposits or assets, and supporting risk management programs.

The policy includes the designation of a Risk Margin Fund and a Self-Insured Retention (SIR) Fund to clarify how PLAN assets are allocated to meet funding goals. The Risk Margin Fund contains assets sufficient to cover the difference between "expected" liabilities, calculated at a 50% confidence level, and liabilities at a 90% confidence level. The SIR Fund contains assets sufficient to allow PLAN to safely raise or lower the SIR in response to insurance market conditions. The PLAN's current SIR is \$5 million.



The AU Committee set a goal of increasing the SIR Fund to \$10 million by July 1, 2005. For the past four years the Board agreed to allocate half of any dividend payable to the SIR Fund.

This year, in support of the \$10 million goal, the ABAG PLAN Board voted not to declare dividends and allocate all of the money, \$2.759 million, to the SIR Fund. This brings the SIR Fund to \$9.374 million.

This was a difficult decision for the Board as members are facing revenue decreases and the dividend could have assisted. However, the continued financial strength of the PLAN was paramount to this decision. The commitment to the financial goals re-affirms the quality and value of PLAN services. PLAN members saw their overall funding increase by 10%, only slightly higher than the 9% increase in payroll, compared with 50, 90, and 100% or more increases faced by agencies in the private insurance market.

Additional goals and milestones will be met as ABAG PLAN committees continue the work of maintaining quality service for PLAN members.

Benchmarks

ABAG PLAN Funding policy benchmarks:

- Yearly deposit is at least 50% confidence level with a goal of 70%.
- Total fund to SIR ratio is at least 2:1 with a goal of 3:1.
- Maintain SIR Fund with a goal of \$10 million by 2005.
- Maintain Risk Margin fund at 90% Confidence Level.

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| RISK BRIEFS — Parks Safety Update |
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| NEWS BRIEFS — Police Car Grant |

CLAIM TIPS

Here are a few simple things you can do to resolve claims faster and more efficiently:

- Notify ABAG PLAN when an incident is reported. Having PLAN examiners on the scene from the beginning makes the process easier as examiners can begin to evaluate the claim or provide information about clean-up processes.
- Give other City departments with after-hours responsibility PLAN contact numbers and claim information. For example, police departments that are the after-hours contact for the public works department should have copies of the sewer information sheets and the ABAG PLAN telephone numbers.
- Remember to keep the envelopes that claim forms come in. The postmark records the claim date in keeping with statutory requirements.
- When you respond to a claimant in writing, fill out and file the "Proof of Service by Mail" form. Again, this provides a record of when the item was mailed.
- If you have information about a potential claim, please send an incident report before the claim is filed.
- When claims are sent to the examiner, include any additional information such as a police or public works report.
- Include the names of witnesses or staff contacts to provide additional information.

NEED RELIEF FROM HIGH WORKERS' COMPENSATION RATES?

ABAG SHARP WORKERS' COMPENSATION POOL OFFERS AN ALTERNATIVE



**ABAG PLAN
Corporation
A Pooled Liability**

Assurance Network

*Providing self-insured coverage to
cities in the San Francisco Bay Area*

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Workers' Compensation rates in California have skyrocketed in the past year and are expected to continue rising. Policies are being canceled and the market is restricted, leaving public agencies few choices. As a result, more agencies are turning to pooling as a way to control their costs.

ABAG manages a primary Workers' Compensation risk-sharing pool, called SHARP. It is designed to provide small to medium-sized municipalities and agencies the benefits available to larger self-insured entities. Members participate in a risk sharing pool providing up to \$150,000 of coverage.

SHARP participates in an excess Workers' Compensation pool for losses greater than \$150,000. SHARP contracts with a third-party claims administrator on behalf of the members. Pooling in this manner allows members the benefits of primary coverage and the flexibility of self-insurance without the added expense of a traditional insurance company.

A overly competitive Workers' Compensation market in the 1990s has shifted in the last two years. One public agency has reported a 400% premium increase for a policy with a deductible \$250,000 higher than the previous year. Pooling is attractive now and better for the long term. Pooling helps to stabilize and better predict costs by insulating members from the gyrations of the primary insurance market. One example is ABAG PLAN Liability Program. Members' overall funding increased 10%, compared with agencies in the private insurance market that received coverage restrictions on top of premium increases of 40% to 100% or more.

The SHARP pool is actively recruiting new members. Interested parties should contact Marcus Beverly at 510/464-7969 or marcusb@abag.ca.gov for more information.

WHY DO WE USE THAT FORM?

Eileen Barr, Claims Examiner

Government Code Section 815(a) of the Tort Claims Act provides that “except as otherwise provided by statute a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” On the surface, the law is simple. However, the Tort Claims Act laid the groundwork for a unique body of law that governs the presentation and handling requirements for claims against public entities.

Since the provisions of the Tort Claims Act limit public entity liability, there are statutory notice requirements that must be given to the claimant. There are specific time limits to file claims, statutory time deadlines to return late claims, or to advise claimants that there is not enough information to properly investigate the claim. ABAG PLAN has developed claim response letters for members’ use that comply with statutory requirements, address specific timelines, and preserve valuable city defenses. One common example is the claim rejection notice, PLAN form #3. This notice must include a warning, advising claimant of the time limitation to file legal action to contest the claim rejection.

Recently, all of the form letters in the ABAG PLAN General Liability Manual were reviewed by Attorney Gregg Thornton. Based upon his recommendations, letters and *Release of All Claims* forms were updated and sent to PLAN city liaisons several weeks ago. For ease of use, the updated forms are available at www.abag.ca.gov/plan. After logging into the site, look under Forms & Instructions for the revised letters.

The updated ABAG PLAN website is a valuable resource and in addition to the revised claim response letters, the site includes good reference material and great links to other sites.

Revised Forms

- **Claim Form**
Generic form
- **Release of All Claims**
Claimant releases the City from any additional claims or future liability arising from the same incident. Claimant must sign this in order to receive a settlement check.
- **Form #2 Notice of Insufficiency**
This notice is sent to claimant to let them know that they did not provide the information required by Government Code Section 910. The claim must be amended to include the missing information for proper investigation.
- **Form #3 Normal Claim Rejection**
The City rejects the claim on its merits and claimant has six months from the date of mailing of the notice to file legal action to contest the claim rejection.
- **Form #7 Rejection of Application to Present a Late Claim**
The City rejected claimants’ late claim application and court action must be filed to contest the rejection.
- **Form #9 Late Claim Application was Filed Late**
Claimant did not file the late claim application within one year of the accrual of the cause of action.
- **Form #10 Claim Part Untimely/Part Rejected**
Some aspects of the claim are untimely and are returned to claimant, but other portions of the claim are timely and rejected on its merits.
- **Form #11 Claim Rejection Following Insufficiency Notice**
If the claim is not amended by claimant within 15 days, this rejection shortens the statute to file legal action to six months from the date of mailing the notice.

Other Available Forms*

Form #5 Rejection as Untimely/Six Months

Notifies claimant that their claim is being returned as it was not filed within the six-month claim filing period.

Form #6 Rejection as Untimely/1 Year

Notifies claimant that their claim is being returned as they did not present it within one year after the occurrence as required by law.

Form #8 Acceptance of Late Claim Application/Rejection of Claim

Accepts the late claim application, but rejects the claim.

No Jurisdiction Letter

Advises claimant that the location of the claim is not under the control or jurisdiction of the City.

*No form #4

Risk Management

An analysis of recent efforts to minimize risk and prevent losses

DON'T LET YOUR CITY'S BUDGET GO DOWN THE DRAIN

Sewer Loss Mitigation Program Works on Several Fronts

Recent claims trend analysis reveals that sewer backflow claims are becoming more expensive and require focused risk control efforts. Between 1998 and 2000, ABAG PLAN paid out \$277,602.81 for 33 sewer claims. PLAN is actively pursuing ways to reduce the numbers and cost of these claims and as a result has developed the Sewer Loss Mitigation Program.



This multi-tasked approach includes a model ordinance, maintenance procedures, revised claim procedures, training, public outreach, and a sewer relief device grant program. Funding for the Sewer Loss Mitigation program was approved at the ABAG PLAN Board of Directors Meeting on May 22, 2002.

Model Ordinance

As a risk prevention measure, the model ordinance was developed to define city and homeowner responsibilities regarding sewer maintenance. The model ordinance also describes requirements for the addition of backflow protection and relief devices. The language is available at <http://www.abag.ca.gov/plan/>.

Model Procedures and Training

The training seminar is designed to reduce the frequency of sewer overflows and the severity of those claims that do occur by giving innovative tools to city and sewer district managers. This full-day training focuses on sewer overflow prevention through effective collection system management based on the U.S. Environmental Protection Agency's proposed Capacity, Management, Operations, and Maintenance (CMOM) model program and how to manage sewer overflow claims when they do occur.

Training is currently scheduled for San Carlos on October 3 and in Benicia on October 8, from 9:30 a.m. to 3:00 p.m. Notices detailing the sessions, locations, and registration information have been e-mailed to Board Members and Public Works Directors. Details are available on the website or by contacting Marcus Beverly at 510/464-7969.

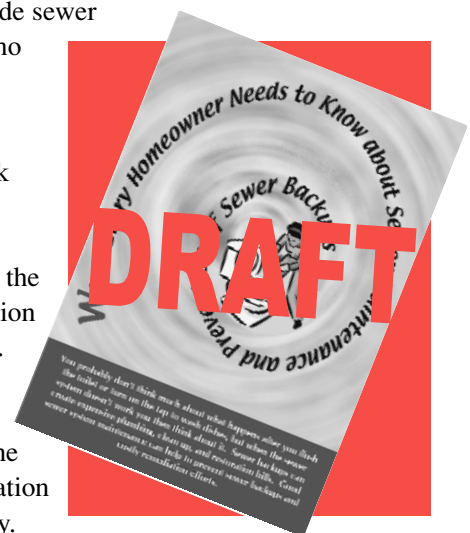
Public Outreach and Sewer Relief Device Grant

Key to the success of this effort is public education. The users of the sewer system must be armed with accurate information. To aid with this, a sewer education brochure has been developed and will be mailed to residents in PLAN member cities in areas with previous backflow problems. The brochure describes the sewer system, steps for prevention, sewer relief device grant program, and what to do if a backflow occurs.

Key to preventing backflow in the home is a sewer relief device (also called a pop-up or sewer relief plug) that is installed in the home's sewer cleanout. This device allows water and materials that back up to escape from the cleanout rather than flowing into the home. As this device is a simple and economical way to prevent costly sewer spills in the home, ABAG PLAN has established a program to provide sewer relief devices at no charge to homeowners.

Dedication to risk management education and training is key to the successful operation of ABAG PLAN. The Sewer Loss Mitigation program is just the latest implementation of this philosophy.

We look forward to working with our members and the public to reduce the frequency and severity of sewer backflow claims.



ASBESTOS: ANOTHER FACTOR IN SEWER BACK FLOW CLEAN UP

Lori Hardacre, Claims Examiner

Sewer response clean-up is frequently more complicated than first expected. Previous issues of *Risk Matters* have examined the impacts of mold on clean up and handling at sewer spill sites. Mold is not the only factor. Asbestos can also be a concern and unless handled properly, create additional delays and expenses.

Frequently with a sewer spill claim, the effluent has made contact with the floors and walls in the room where the spill emanates, and in adjacent rooms. It is not possible to guarantee that a cleaning with disinfectant removed any effluent that may have seeped under a linoleum floor. The floor needs to be pulled up and discarded so the wooden subfloor can be sanitized.

Sheetrock absorbs moisture, so the effluent wicks up into the walls. When the overflow is clean water, it is possible to dry the walls and clean the surface with disinfectant. With a sewer spill, the lower two feet of the affected walls needs to be removed. This allows the removal of contaminated walls and opens the wall cavity for disinfecting and proper drying, reducing the opportunity for mold growth.

It is not unusual to find asbestos in flooring tiles, linoleum, and ceiling tiles or ceiling treatments. Before sheetrock or flooring materials can be removed at sewer spill sites, it is necessary to test for the presence of asbestos fibers.



With sheetrock, the asbestos is often found in the tape or mud mixture used to finish the wall joints.

If these structures containing asbestos are torn out without taking proper containment precautions, it may be necessary to remediate the asbestos contamination before proceeding with handling the original sewer damages. A certified AHERA (Asbestos Hazard Emergency Response Act) building inspector should be used to test building materials. The remediation process should be done by a qualified professional with training in asbestos removal.

With sewer spill claims, it important is to have an ABAG Examiner on site to oversee the work being performed by a City crew or by the remediation company. A recent claim involved a remediation company removing sheetrock walls without first obtaining the proper tests. The sheetrock tape was “hot” for asbestos, and the entire residence had to be hepa-vacuumed and wiped down.

While the restoration company’s insurance carrier is handling this asbestos exposure claim, this incident caused a two-month delay on finalizing the claim, and created a more distrustful atmosphere with these homeowners.

Asbestos Information

According to the California Environmental Protection Agency, Air Resources Board, Fact Sheet on Asbestos Number 1, “The risk of disease depends upon the intensity and duration of exposure. Exposure to low levels of asbestos for short periods of time poses minimal risk. Asbestos fibers can penetrate body tissues and remain in the lungs and the tissue lining of the lungs and abdominal cavity. The fibers that remain in the body are thought to be responsible for asbestos-related diseases. The illnesses caused by asbestos may not be observed for twenty or more years.”...“The most common serious diseases caused by asbestos include: Asbestosis Lung cancer, and Mesothelioma.” Additional information on asbestos is available at the California Air Resources website, www.arb.ca.gov/toxics/Asbestos/general.htm and also at California Division of Occupational Safety and Health, <http://www.dir.ca.gov/dosh/Asbestos.html>.



Risk Management

An analysis of recent efforts to minimize risk and prevent losses

MEASURES PREVENT PUBLIC PARKS LIABILITY

City parks and sports facilities can be fun for children and adults. Many children and adults learned to play team sports at a public park. For the most part today's recreational experience is positive, but in rare cases, injuries and property damage occur at these facilities.

Risk Matters Summer 2000 discussed park inspection requirements that were mandated by the state. The mandate required cities to have inspections performed by a certified playground inspector and required cities to upgrade playgrounds by replacement or improvement to satisfy regulations by October 1, 2000. Since the inspections have been completed, the need to maintain safety has not gone away.

Signage

To help preserve park safety and minimize claims and liability, cities are being encouraged to post warning signs to make patrons aware of potential risk of injury or

property damage. Simply posting a sign indicating "park at your own risk" can protect cities from claims. For example, car damage claims at golf courses can be avoided with proper signage. A recent claim was received to repair a broken car window. The vehicle was parked at the entrance of a fenced golf course and a golf ball came over the 30-foot fence and shattered the rear window of the vehicle. The claim was rejected because the city used proper signage to indicate the risk of parking near the golf course and fencing was adequate to reduce the risk of damage.

Waiver

Another park safety measure that protects against claims is the waiver. In this case, team sports participants sign a waiver stating that they are aware of the potential for injury on the sports field. The city would only be

responsible for the claim if they deliberately ignored safety standards. Waivers make patrons aware that the park is being used at their own risk and protects against claims, as long as the park is well maintained.

Inspection Program

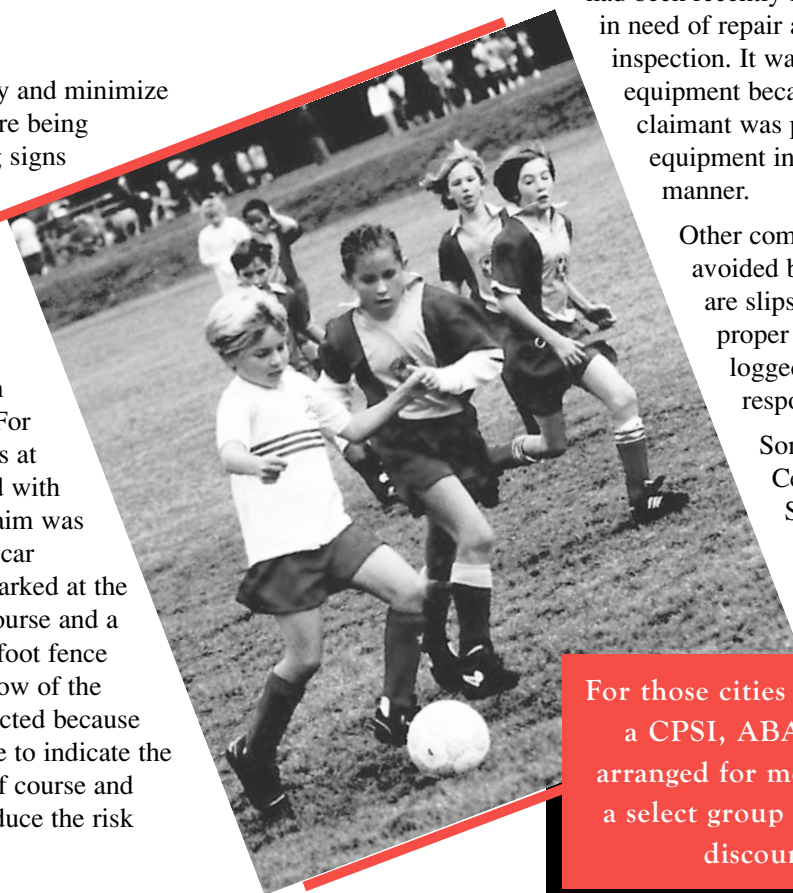
Cities are encouraged to produce inspection reports every two weeks to document safety concerns and to make sure that the facility is up to code and being properly maintained. Inspections are done to ensure that the facility is clean and free of safety hazards.

Recently a claim was rejected when a softball player's tooth was broken on the baseball diamond. The claim was rejected because it was noted that the baseball diamond

had been recently inspected and was not in need of repair at the time of inspection. It was determined that equipment became loose because the claimant was playing on the equipment in an unauthorized manner.

Other common claims that are avoided by proper inspection are slips and falls. When proper maintenance is logged, cities are not held responsible.

Some cities have a Certified Playground Safety Inspector (CPSI) on staff.



For those cities that do not have a CPSI, ABAG PLAN has arranged for members to access a select group of inspectors at discount rates.

Please e-mail a request for the latest CPSI list to Marcus Beverly, at marcusb@abag.ca.gov.

TREES— BEAUTIFUL AND DANGEROUS?

Many cities have planted street trees to provide shade and decoration. ABAG PLAN occasionally receives claims due to city trees dropping limbs onto vehicles on hot summer days—known as summer limb drop.

There is no definitive explanation for why trees drop limbs, but possible reasons vary from moisture in the branch, or expansion due to heat, or structurally compromised limbs due to poor pruning cuts. Local experts indicate that this is not just a summer problem and recommended some actions for the proper care and feeding of trees (described below).

When ABAG PLAN gets a limb drop claim, the claims examiner uses the following process to work with the City and claimant:

- 1 Review the claim to determine what is needed to investigate and develop a conclusion:
 - Who, what, where, when and why
 - What are the claimed damages
 - Is the City liable
 - Is it too late for inspection
 - Examine the City records regarding both the tree and the incident.
- 2 Conduct a weather search to determine if unusual weather conditions on that day and time contributed to the claim.



Websites such as www.wunderground.com lists hourly temperatures and wind readings and newspapers at www.sfgate.com.

- 3 Open communication with the claimant and the City. Send a letter to the claimant acknowledging receipt of the claim. Frequently, the following information needs to be requested:
 - Repair estimates
 - History of problems or apparent defects concerning the tree
 - Determine if claimant's homeowners or auto Insurance Carrier will pay for damages and then collect from the responsible party (subrogate).
- 4 Develop an initial loss report to the City. This report includes:
 - Request for City arborist, parks, or maintenance department report reviewing and determining the cause of the drop.
 - Summary of records regarding prior maintenance and inspection histories and any prior problems, damages, or complaints.

The final step is to determine liability based on the response from City arborist or other personnel and weather investigations. The claim action recommendation is then submitted to the City. If there was no notice of a problem with the tree and inspection reveals no apparent cause for the drop, then the claim is usually denied.

EXPERT ADVICE

Niles Gregory, Parks and Community Services Superintendent with the City of **Benicia**, says that specific species of trees cause problems. "Trees have caused problems with limb and debris drop in the past and will continue to cause concerns. Eucalyptus year-round drops branches and sections of bark randomly. Pine trees are sensitive to over-watering. They are desert trees and are used to wet winters only. Overwatering can lead to abnormal growth and increased branch diameter and then limb drop."

Rick Heffern, City of **Foster City** Parks Maintenance Supervisor, states that "maintenance crews should not be sent into trees during cold weather right after a heat wave. Tree trunks are still sending additional fluids from the trunk into branches, which cause the branches to be heavy and prone to breaking. The trees need a week's rest for the fluids to re-allocate back to the trunk. There is no method for projecting when trees will drop limbs - there are too many variables involved."



News Briefs

POLICE CAR CAMERA GRANT

With an ABAG PLAN \$11,000 matching grant, the Town of Colma has installed three digital police in-car cameras, the first in Northern California. The system has similar installation costs to standard in-car video cameras and offers several benefits.

Unlike video tapes, digitally recorded tapes are very small, which substantially reduces the amount of storage, allowing cameras to be run continually. Digital footage can also be used in court, as the footage is “watermarked” and the chain of evidence is maintained.

In 2000, the PLAN Board of Directors approved funding for 29 video cameras because the ability to record police interactions is invaluable for risk management purposes. Sixteen PLAN members have used the grant to date, placing them at the forefront of this newest technological innovation that may be the wave of the future.



Web Design Update & New URL

The ABAG PLAN website is re-designed, thanks to the efforts of Jason Chan, ABAG PLAN intern. The new design includes updated information and additional links to other valuable sources of information. Find ABAG PLAN at www.abag.ca.gov/plan.

Legal Case Impact

The California Supreme Court has ruled that public entities generally cannot be held liable for crimes committed on public property. In the case of *Dana V. Zelig v. County of Los Angeles*, the court, on May 20, also reiterated the long established rule that public entities cannot be held liable for failure to protect individuals against crime. Several websites offer additional information and analysis of the case and are linked to the ABAG PLAN site, including: www.govlaw.web.com/pubs/govlaw/index.html.

Earthquake Study Update

Working with the ABAG Earthquake Program, a preliminary *Earthquake Study* has been completed, assessing earthquake risk for each insured property in the Pooled Property Program via a detailed survey. The Study will be revised to incorporate new projections from the U.S. Geological Survey and additional property information. The final report is expected by the end of the year. For more information on the *Study*, please contact Jeanne Perkins, 510/464-7934 or Marcus Beverly, 510/464-7969.

Police Training Seminar

159 attendees in four locations attended the well-received Risk Management for Law Enforcement Line Personnel seminars in June taught by Gordon Graham.

Calendar

September 11

Loss Prevention Committee

October 9

Board Planning Meeting

November 6

Claims Committee

December 4

Actuary and Underwriting
Committee

*All committee meetings are from
10:30 a.m. to 1:30 p.m. at ABAG
offices, 101 Eighth Street,
Oakland, CA.*

*Location of Board Meeting to be
announced later.*



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